85-820

Supreme Court, U.S.
FILED
JUN 12 1985
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

AUDRIANNE NORWOOD — PLAINTIFF/ PETITIONER

V.

INA LIFE INSURANCE CO., A CORPORATION, AND DOES I THROUGH 50, — DEFENDANT/ RESPONDENTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

AUDRIANNE NORWOOD
P. O. BOX 996
BEVERLY HILLS, CALIFORNIA 90213
213-273-3033; 213-277-5558
ATTORNEY FOR PETITIONER
IN PROPRIA PERSONA

Questions Presented for Review

1. Whether a decree of divorce in and of itself, has any affect on the right of a wife to the proceeds of a Policy of life insurance on the husband, which designates the wife as beneficiary?
2. Does a divorced wife remain the beneficiary of a Policy of insurance on her husband's life, when husband died after divorce, despite provisions of life insurance Policy requiring notice of any change of beneficiary?
3. Whether the subject Policy was ambiguious and would prevent recovery of Policy proceeds provided by respondent's Group Accidental Death and Dismemberment Policy for the death of Petitioner's husband because Petitioner was divorced at the time of husband's death?

TABLE OF CONTENTS

	Page
Questions	i
Table of Authorities	iii
Petition for Writ	1
Opinion	2
Jurisdiction	2
Constitutional Provision Involved	3
Statement of the Case	3
Reasons for Granting Writ	5
Appendix A	10
Appendix B	12
Appendix C	13
Appendix D	16
Appendix E	17
Appendix F	18

TABLE OF AUTHORITIES

Conn Mutual Life Insurance Co. v. Schaefer, (1877) 944 U.S.

Courtois v. Grand Lodge of A.O.U.W of California (1902) 67f 970, 972; 135 Cal. 552

Edginton v. Equitable Life Assurance Society of United States (1945 236 Iowa 903, 20 N.W. 2d 411.

Ficke v. Prudential Insurance Co. (1947) 305 Ky. 171, 202 5.W. 2d 429

Land v. West Coast Life Insurance Co. (1945) 270 P. 2d 154

Shaw v. Board of Administration, (1952) 241 P. 2d 635, 1099 Cal. App. 2d 770.

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NO.

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AUDRIANNE NORWOOD — PLAINTIFF/ PETITIONER

vs.

INA LIFE INSURANCE CO. a Corporation, and Does I through 50, — DEFENDANT/ RESPONDENTS

==========

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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The Petitioner, Audrianne Norwood, respectfully PRAYS that a Writ of Certiorari issue to review the memorandum decision filed

by the United States Ninth Circuit filed March 14, 1985, in the above entitled matter.

OPINION BELOW

The Court of Appeals entered its Memorandum decision affirming the judgment of the United States District Court, Central district of California entered March 26, 1984. A copy of the Memorandum is attached as Appendix A.

The Court denied Petitioner's Petition for rehearing on July 3, 1985. A copy of the order is attached as Appendix B.

JURISDICTION

On March 14, 1985, the Court of Appeals filed its Memorandum decision affirming the granting of respondent's summary

judgment. The jurisdiction of this court is invoked under Title United States code, Section 2101.

CONSTITUTIONAL PROVISION INVOLVED

United States constitution,

Amendment V:

> Nor shall any person...be deprived of life, liberty, or property, without due process of law...

STATEMENT OF THE CASE

Petitioner, Audrianne Norwood, applied for coverage under a Group Accidental Death and Dismemberment Policy, Number OKH 1223, on or about May 18, 1979. Coverage provided for benefits for the death of a covered employee and eligible dependents including any spouse and/or children.

On December 31, 1981, Ronald Harris, husband of Petitioner, died.

On January 13, 1981, Petitioner, Audrianne Norwood, filed a claim and demanded payment of the Policy proceeds, which claim was denied by respondent, herein.

Petitioner subsequently filed a complaint for declaratory relief and for damages. Respondent filed a motion for summary judgment, which was granted by the trial court.

Petitioner filed an appeal to the United States Court of Appeals for the Ninth Circuit. On March 14, 1985, the Court of Appeals caused to be filed its Memorandum decision affirming the trial court's judgment. On July 3, 1985, the Court of Appeals denied Petitioner's petition for rehearing.

REASONS FOR GRANTING THE WRIT

Where a Policy of Life Insurance or a designation of a beneficiary, is valid at its inception, it remains so, although the insurable interest or relationship of the beneficiary has ceased, unless it is otherwise stipulated in the contract.

Pursuant to California statutory law, "an interest in the life or health of a person insured must exist when the insurance takes effect, but need not exist thereafter or when the loss occurs." California Insurance Code 286.

Hence, once such interest exists, the right to recover the Policy Proceeds continues even though the insurable interest may cease, unless expressly stated otherwise in the Policy.

In Courtois v. Grand Lodge of A.O.U.W. of California (1902) 67f 970, 972; 135 Cal. 552, the court established the general rule that, "a Policy of life insurance, or a designation of a beneficiary, valid at its inception, remains so, although the insurable interest or relationship of the beneficiary has ceased, unless it is otherwise stipulated in the contract."

To the same effect as the above, see the following cases:

Conn Mutual Life Insurance Co. v. Schaefer, (1877) 944 U.S.

Shaw v. Board of Administration, (1952) 241 p. 2d 635, 1099 Cal. App. 2d 770.

Ficke v. Prudential Insurance Co. (1947) 305 Ky. 171, 202 S.W.2d 429.

Edginton vs. Equitable Life Assurance Society of United States (1945) 236 Iowa 903, 20 N.W. 2d 411.

"A decree of divorce in and of itself has no effect on the right of a wife to the Proceeds of a Policy on the life of the husband designating her as beneficiary issued prior to the divorce of the parties. (citations)" Shaw 109 Cal. App. 2d at 774.

Here, the Petitioner and Ronald Harris were married at the time the insurance policy in question took effect. The insurance Policy provides: "coverage continues as long as you continue to pay premium. Coverage can be continued until you become 70 years of age unless (1) you otherwise cease to be eligible or (2) the insurance company declines to renew

the insurance for all of those who enroll under the plan. Your dependent's coverage ceases when your insurance terminates or when they cease to be eligible." No where does the Policy state coverage of an insured spouse will terminate upon divorce. Since such an event would terminate coverage, it acts as a condition subsequent and must be shown by clear and unmistakable language. Lowe v. Copeland, 125 CA 315, 13 f. 2d 522. Since respondent did not state in clear and unambigious language that divorce terminates coverage, the Policy of insurance remained in effect up to and including the time of Ronald Harris' death. Land v. Westcoast Life Insurance Co.(1945) 270 P. 2d 154.

For the foregoing reasons, Petitioner Audrianne Norwood, respectfully requests that a writ of certiorari issue to review the Memorandum decision of the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

Audrianne Norwood

AUDRIANNE NORWOOD
P. O. BOX 996
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213-273-3033; 213-277-5558
ATTORNEY FOR PETITIONER
IN PROPRIA PERSONA

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3701 Wilshire Blvd., Ste. 400
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TEL: (213) 381-2600
Attorneys for Defendant, Life
INSURANCE COMPANY OF NORTH AMERICA

Lodged Mar 8, 1984

Filed Mar 22, 1984

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

AUDRIANNE NORWOOD
Plaintiff,
-vs-
INA LIFE INSURANCE CO. ETC., ET AL.,
DEFENDANTS

NO. CV-83 3514 WMB (Mcx): JUDGMENT ENTERED MAR 26, 1984, CLERK U.S. DIST. COURT CENTRAL DIST OF CALIF BY DEPUTY

This matter having been heard by the Court, Honorable William Matthew Byrne, Jr., District Judge, presiding, on defendant LIFE INSURANCE COMPANY OF NORTH AMERICA's Motion for Summary Judgment, pursuant to Federal Rule of Civil Procedure, Rule 56, and the Court

having considered the papers filed in support of and in opposition to said Motion, and the arguements and evidence submitted in support and in opposition to said Motion;

IT IS ORDERED AND ADJUDGED THAT:

Plaintiff AUDRIANNE NORWOOD take nothing, that the action be dismissed on the merits, and that defendant LIFE INSURANCE COMPANY OF NORTH AMERICAN recover of the plaintiff AUDRIANNE NORWOOD, its costs of action in the sum of $_____.

Dated at Los Angeles, California, this 22 day of March, 1981.

WILLIAM MATTHEW BYRNE, JR.
United States District Judge

PRESENTED BY;

CRAIG H. BELL, ESQ.

HAGENBAUGH & MURPHY

Attorneys for Defendant,
LIFE INSURANCE COMPANY OF
NORTH AMERICA

FILED JULY 03, 1985 PHILIP B. WINBERRY Clerk, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AUDRIANNE NORWOOD,

Plaintiff-Appellant,

ORDER NO. 84-5853

vs.

INA LIFE INSURANCE CO., et al.

DEFENDANTS-APPELLEES.

Before: FLETCHER, PREGERSON and HALL, Circuit Judges.

Appellant's motion to recall the mandate and to file a late petition for rehearing with suggestion for rehearing en banc is DENIED.

APPENDIX B

484 S. Roxbury Dr. #205
Beverly Hills, California 90213
April 18, 1985
U.S. Court of Appeals
9th Circuit Court
P.O. Box 547
San Francisco, California 94101

Attn: Ms. Denise Brown

I would appreciate being heard en banc. I feel that I have been severly wronged because I am concerned about the money I have paid out over the years to INA. They knew that they owed me from the beginning because they accepted my premiums and therefore my family was covered. I was dependent on my husband for support and the children were also dependent. There has been a breach of contract by the insurance company. I have suffered from loss of peace of mind and

nervous tensions that resulted in a great deal of hair loss, and a lot of unnecessary debt. The court didn't address the main issue presented - absence of provision to contrary. Absence of provision stating policy eligibility would cease upon divorce. Divorce makes no difference unless stipulated. (Unless provision stated divorce would terminate coverage, and in this case it didn't).

Under Public Policy Considerations, it would seem to be a manifest injustice for the court not to grant the expectation of a widow with children.

In absence of provision - my expectations haven't been realized. I purchased policy with expectation of proceeds being paid and court didn't grant relief.

I understand an "insurance policy" to be a contract between insurer and insured whereby for premiums paid by insured the insurer undertakes to indemnify the insured against loss, damage, or liability arising from a contingent or unknown event.

Please read the following and I pray that you grant my case to go to Court.

Thank you.

Respectfully,

Audrianne Norwood

Attorney for PETITIONER

In Propria Persona

P. O. Box 996

Beverly Hills, California 90213

May 29, 1985

RE: NO. 84-5853

D.C. NO. CV 83-3514 WMB

Ms. Denise Brown

U.S. Court of Appeals

P. O. BOX 547

San Francisco, California 94101

Dear Ms. Brown:

I was told by the Clerk's office that the original copy of petition for rehearing was never received.

I am submitting copy of original petition for rehearing which was mailed on April 18, 1985.

Also, I'm enclosing copy of receipt which indicates that petition was in fact received.

Very truly yours,

Audrianne Norwood

(In Pro Per)

Appendix D

P 178 600 426

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to U.S. Court of Appeals	
Street and No. Box 5476	
P.O. State and ZIP Code San Francisco Ca. 94101	
Postage	$ .75
Certified Fee	.75
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	.70
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	$2.20
Postmark or Date	APR 18 1983 U.S.P.O. CA

* U.S.G.P.O. 1984-446-814

PS Form 3800, Feb. 1982

APPENDIX E

PAGE 17

BEST AVAILABLE COPY

Office of the Clerk

U. S. Court of Appeals for the Ninth Circuit

U.S. Court of Appeals and Post Office Bldg.

7th & Mission Streets, P.O. Box 547

San Francisco, California 94101

June 10, 1985

Philip B. Winbery, Clerk of Court 415-556-7340

Audrianne Norwood

P.O. Box 996

Beverly Hills, Calif. 90213

RE: 84-5853: Norwood v INA Life Insurance Co., etc., et al

Dear Ms. Norwood,

I am returning your petition for rehearing to you, because the court no longer has jurisdiction to file it. In order for the court to consider your petition for rehearing, you mut first file a motion to recall the mandate of this court.

In reading the copy of your letter dated April 18, 1985, it appears you want the en banc court to consider your petition for rehearing. If that is what you wish, you must indicate in your petition for rehearing that it is also a suggestion for rehearing en banc, and this court needs an original and 33 copies of the petition.

Please be advised that the time for you to have filed your petition for rehearing was no later than 14 dys after this court's decision, i.e. March 28, 1985. I notice on your copy of the petition for rehearing that the petition was served April 18. By that time the mandate of this court had issued. Mandate was issued April 4, 1985.

Cordially,

Denise M. Brown

Deputy Clerk

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 14 1985

PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

AUDRIANNE NORWOOD,

Plaintiff-Appellant,

v.

INA LIFE INSURANCE CO., a corporation, and DOES 1 through 50,

Defendants-Appellees.

No. 84-5853

D.C. No. CV 83-3514-WMB

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Hon. William M. Byrne, Presiding

Argued and Submitted: March 8, 1985

BEFORE: FLETCHER, PREGERSON, and HALL, Circuit Judges.

Audrianne Norwood appeals from the district court's grant of summary judgment in favor of INA Life Insurance Company (INA) in her diversity action against INA for failure to pay insurance proceeds, intentional infliction of emotional distress, fraud, and punitive damages. This court has jurisdiction under 28 U.S.C. § 1291 (1982). We affirm.

Norwood claims that under the terms of her INA family insurance policy, she was entitled to receive insurance proceeds for the death of her ex-husband, Ronald Harris, in December, 1980. Norwood and Harris had been divorced five months earlier, in July,

* The panel has concluded that the issues presented by this appeal do not meet the standards set by Rule 21 of the Rules of this Court for disposition by written opinion. Accordingly, it is ordered that disposition be by memorandum, forgoing publication in the Federal Reporter, and that this memorandum may not be cited to or by the courts of this circuit save as provided in Rule 21(c).

APPENDIX A

1980.

We conclude that under the clear and unambiguous terms of Norwood's insurance policy, upon the divorce of Harris and Norwood, Harris was no longer covered by the policy. We further conclude that INA's informational brochure concerning Norwood's policy that she admits receiving provided her with clear and unambiguous notice that Harris' coverage would terminate upon their divorce. Therefore, the district court was correct in granting summary judgment against Norwood.

AFFIRMED.

APPENDIX A